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CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY WLM DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RIGOBERTO ARZATE MIRANDA,
Petitioner,

vs.

UNITED STATES OF AMERICA, et al.,
Respondents.

Civil No. 11-2002 BEN (WMC)

ORDER:

**(1) DENYING REQUEST FOR
CERTIFICATE OF APPEALABILITY**

**(2) DENYING REQUEST FOR DE
NOVO REVIEW BY DISTRICT JUDGE**

[Docket No. 38]

Presently before the Court is Petitioner's Request for Certificate of Appealability. (Docket No. 38.) Petitioner's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 was previously denied by the Court. (Docket No. 36.) Petitioner now requests (1) a certificate of appealability, and (2) de novo review by a district judge.

First, 28 U.S.C. § 2253(c)(1) provides:

Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
(B) the final order in a proceeding under section 2255.

"[A]n appeal from an order denying a 28 U.S.C. § 2241 petition that is not a final order in a habeas proceeding in which the detention complained of arises out of process issued by a *State court*"

1 does not require a certificate of appealability under § 2253(c)(1). *Forde v. U.S. Parole Comm'n*, 114
2 F.3d 878, 879 (9th Cir. 1997) (emphasis added). Here, Petitioner is currently serving his sentence in the
3 United States Penitentiary Big Sandy, in Inez, Kentucky. Because he is a federal prisoner, the certificate
4 of appealability is **DENIED** as unnecessary. *See id.*

5 Second, Petitioner requests de novo review by a district judge, arguing that (1) he was “never
6 given a notice of the district[] court[]’s] final judgment after remand,” and (2) “relief under 2255 is not
7 applicable to ground 4 of this writ of habeas corpus.” (Request for Certificate of Appealability, at 2.)
8 The Petition was disposed of by a district judge, not a magistrate judge, making this request moot.
9 Moreover, the reasons for Petitioner’s request for de novo review are unpersuasive. Accordingly,
10 Petitioner’s request for de novo review by a district judge is **DENIED** as moot.

11 **IT IS SO ORDERED.**

12 DATED: 6/01/2012

13 
14 HON. ROGER T. BENITEZ
United States District Court Judge